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13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
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16  
17 **Scott Johnson**

18 Plaintiff,

19 v.

20 **Burdette Investments LLC**, a  
21 California Limited Liability  
22 Company

23 Defendant.

24  
25 **Case No.**

26 **Complaint For Damages And  
27 Injunctive Relief For Violations  
28 Of: Americans With Disabilities  
Act; Unruh Civil Rights Act**

29  
30 Plaintiff Scott Johnson complains of Burdette Investments LLC, a  
31 California; and alleges as follows:

32  
33  
34 **PARTIES:**

35 1. Plaintiff is a California resident with physical disabilities. Plaintiff is a  
36 level C-5 quadriplegic. He cannot walk and also has significant manual  
37 dexterity impairments. He uses a wheelchair for mobility and has a specially  
38 equipped van.

39 2. Defendant Burdette Investments LLC owned the real property located  
40 at or about 1661 Burdette Dr, San Jose, California, upon which "Burdette  
41 Medical Center" operates, in July 2020 and August 2020.

1       3. Defendant Burdette Investments LLC owns the real property located at  
2 or about 1661 Burdette Dr, San Jose, California, upon which “Burdette  
3 Medical Center” operates, currently.

4       4. Plaintiff does not know the true names of Defendants, their business  
5 capacities, their ownership connection to the property and business, or their  
6 relative responsibilities in causing the access violations herein complained of,  
7 and alleges a joint venture and common enterprise by all such Defendants.  
8 Plaintiff is informed and believes that each of the Defendants herein is  
9 responsible in some capacity for the events herein alleged, or is a necessary  
10 party for obtaining appropriate relief. Plaintiff will seek leave to amend when  
11 the true names, capacities, connections, and responsibilities of the Defendants  
12 are ascertained.

13

14       **JURISDICTION & VENUE:**

15       5. The Court has subject matter jurisdiction over the action pursuant to 28  
16 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with  
17 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

18       6. Pursuant to supplemental jurisdiction, an attendant and related cause  
19 of action, arising from the same nucleus of operative facts and arising out of  
20 the same transactions, is also brought under California’s Unruh Civil Rights  
21 Act, which act expressly incorporates the Americans with Disabilities Act.

22       7. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is  
23 founded on the fact that the real property which is the subject of this action is  
24 located in this district and that Plaintiff's cause of action arose in this district.

25

26       **FACTUAL ALLEGATIONS:**

27       8. Plaintiff went to Burdette Medical Center (“Medical Center”) in July  
28 2020 and August 2020 with the intention to avail himself of its services

1 motivated in part to determine if the defendants comply with the disability  
2 access laws.

3 9. The Medical Center is a facility open to the public, a place of public  
4 accommodation, and a business establishment.

5 10. Unfortunately, on the dates of the plaintiff's visits, the defendants failed  
6 to provide wheelchair accessible parking in conformance with the ADA  
7 Standards as it relates to wheelchair users like the plaintiff.

8 11. The Medical Center provides parking to its customers but fails to  
9 provide wheelchair accessible parking.

10 12. One problem that plaintiff encountered is that there were no access  
11 aisles that accompanied the ADA parking stalls.

12 13. Plaintiff believes that there are other features of the parking that likely  
14 fail to comply with the ADA Standards and seeks to have fully compliant  
15 parking available for wheelchair users.

16 14. On information and belief the defendants currently fail to provide  
17 wheelchair accessible parking.

18 15. Additionally, on the dates of the plaintiff's visits, the defendants failed  
19 to provide wheelchair accessible paths of travel in conformance with the ADA  
20 Standards as it relates to wheelchair users like the plaintiff.

21 16. The Medical Center provides paths of travel to its customers but fails to  
22 provide wheelchair accessible paths of travel.

23 17. A few problems that plaintiff encountered is that the ramp that runs up  
24 to the Medical Center offices entrance did not have a level landing. What is  
25 more, the ramp had a slope that was too steep for plaintiff. Finally, there were  
unramped steps at the entrances of the Medical Center offices.

26 18. Plaintiff believes that there are other features of the paths of travel that  
27 likely fail to comply with the ADA Standards and seeks to have fully compliant  
28 paths of travel available for wheelchair users.

1       19. On information and belief the defendants currently fail to provide  
2 wheelchair accessible paths of travel.

3       20. Moreover, on the dates of the plaintiff's visits, the defendants failed to  
4 provide wheelchair accessible door hardware in conformance with the ADA  
5 Standards as it relates to wheelchair users like the plaintiff.

6       21. The Medical Center provides door hardware to its customers but fails to  
7 provide wheelchair accessible door hardware.

8       22. A problem that plaintiff encountered is that many of the offices at the  
9 Medical Center had traditional round knob handles that required tight  
10 grasping or twisting of the wrist to operate.

11      23. Plaintiff believes that there are other features of the door hardware that  
12 likely fail to comply with the ADA Standards and seeks to have fully compliant  
13 door hardware available for wheelchair users.

14      24. On information and belief the defendants currently fail to provide  
15 wheelchair accessible door hardware.

16      25. These barriers relate to and impact the plaintiff's disability. Plaintiff  
17 personally encountered these barriers.

18      26. As a wheelchair user, the plaintiff benefits from and is entitled to use  
19 wheelchair accessible facilities. By failing to provide accessible facilities, the  
20 defendants denied the plaintiff full and equal access.

21      27. The failure to provide accessible facilities created difficulty and  
22 discomfort for the Plaintiff.

23      28. The defendants have failed to maintain in working and useable  
24 conditions those features required to provide ready access to persons with  
25 disabilities.

26      29. The barriers identified above are easily removed without much  
27 difficulty or expense. They are the types of barriers identified by the  
28 Department of Justice as presumably readily achievable to remove and, in fact,

1 these barriers are readily achievable to remove. Moreover, there are numerous  
2 alternative accommodations that could be made to provide a greater level of  
3 access if complete removal were not achievable.

4 30. Plaintiff will return to the Medical Center to avail himself of its services  
5 and to determine compliance with the disability access laws once it is  
6 represented to him that the Medical Center and its facilities are accessible.  
7 Plaintiff is currently deterred from doing so because of his knowledge of the  
8 existing barriers and his uncertainty about the existence of yet other barriers  
9 on the site. If the barriers are not removed, the plaintiff will face unlawful and  
10 discriminatory barriers again.

11 31. Given the obvious and blatant nature of the barriers and violations  
12 alleged herein, the plaintiff alleges, on information and belief, that there are  
13 other violations and barriers on the site that relate to his disability. Plaintiff will  
14 amend the complaint, to provide proper notice regarding the scope of this  
15 lawsuit, once he conducts a site inspection. However, please be on notice that  
16 the plaintiff seeks to have all barriers related to his disability remedied. See  
17 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff  
18 encounters one barrier at a site, he can sue to have all barriers that relate to his  
19 disability removed regardless of whether he personally encountered them).

20

21 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS  
22 WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all  
23 Defendants.) (42 U.S.C. section 12101, et seq.)

24 32. Plaintiff re-pleads and incorporates by reference, as if fully set forth  
25 again herein, the allegations contained in all prior paragraphs of this  
26 complaint.

27 33. Under the ADA, it is an act of discrimination to fail to ensure that the  
28 privileges, advantages, accommodations, facilities, goods and services of any

1 place of public accommodation is offered on a full and equal basis by anyone  
2 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.  
3 § 12182(a). Discrimination is defined, *inter alia*, as follows:

- 4 a. A failure to make reasonable modifications in policies, practices,  
5 or procedures, when such modifications are necessary to afford  
6 goods, services, facilities, privileges, advantages, or  
7 accommodations to individuals with disabilities, unless the  
8 accommodation would work a fundamental alteration of those  
9 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 10 b. A failure to remove architectural barriers where such removal is  
11 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are  
12 defined by reference to the ADA Standards.
- 13 c. A failure to make alterations in such a manner that, to the  
14 maximum extent feasible, the altered portions of the facility are  
15 readily accessible to and usable by individuals with disabilities,  
16 including individuals who use wheelchairs or to ensure that, to the  
17 maximum extent feasible, the path of travel to the altered area and  
18 the bathrooms, telephones, and drinking fountains serving the  
19 altered area, are readily accessible to and usable by individuals  
20 with disabilities. 42 U.S.C. § 12183(a)(2).

21 34. When a business provides parking for its customers, it must provide  
22 accessible parking.

23 35. Here, accessible parking has not been provided in conformance with the  
24 ADA Standards.

25 36. When a business provides paths of travel, it must provide accessible  
26 paths of travel.

27 37. Here, accessible paths of travel have not been provided in conformance  
28 with the ADA Standards.

1       38. When a business provides facilities such as door hardware, it must  
2 provide accessible door hardware.

3       39. Here, accessible door hardware has not been provided in conformance  
4 with the ADA Standards.

5       40. The Safe Harbor provisions of the 2010 Standards are not applicable  
6 here because the conditions challenged in this lawsuit do not comply with the  
7 1991 Standards.

8       41. A public accommodation must maintain in operable working condition  
9 those features of its facilities and equipment that are required to be readily  
10 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

11       42. Here, the failure to ensure that the accessible facilities were available  
12 and ready to be used by the plaintiff is a violation of the law.

13

14 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL  
15 RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.  
16 Code § 51-53.)**

17       43. Plaintiff repleads and incorporates by reference, as if fully set forth  
18 again herein, the allegations contained in all prior paragraphs of this  
19 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,  
20 that persons with disabilities are entitled to full and equal accommodations,  
21 advantages, facilities, privileges, or services in all business establishment of  
22 every kind whatsoever within the jurisdiction of the State of California. Cal.  
23 Civ. Code §51(b).

24       44. The Unruh Act provides that a violation of the ADA is a violation of the  
25 Unruh Act. Cal. Civ. Code, § 51(f).

26       45. Defendants’ acts and omissions, as herein alleged, have violated the  
27 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s  
28 rights to full and equal use of the accommodations, advantages, facilities,

1      privileges, or services offered.

2      46. Because the violation of the Unruh Civil Rights Act resulted in difficulty,  
3      discomfort or embarrassment for the plaintiff, the defendants are also each  
4      responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-  
5      (c).)

6      47. Although the plaintiff encountered frustration and difficulty by facing  
7      discriminatory barriers, even manifesting itself with minor and fleeting  
8      physical symptoms, the plaintiff does not value this very modest physical  
9      personal injury greater than the amount of the statutory damages.

10

11      **PRAYER:**

12      Wherefore, Plaintiff prays that this Court award damages and provide  
13      relief as follows:

14      1. For injunctive relief, compelling Defendants to comply with the  
15      Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the  
16      plaintiff is not invoking section 55 of the California Civil Code and is not  
17      seeking injunctive relief under the Disabled Persons Act at all.

18      2. Damages under the Unruh Civil Rights Act, which provides for actual  
19      damages and a statutory minimum of \$4,000 for each offense.

20      3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant  
21      to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

22

23      Dated: January 28, 2021

CENTER FOR DISABILITY ACCESS

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25      By: \_\_\_\_\_



26

27      Amanda Seabock, Esq.  
28      Attorney for plaintiff